

REMARKS/ARGUMENTS

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed August 13, 2008 and the Advisory Action mailed November 10, 2008. Claims 1-40 and 42-43 are pending. Claim 41 has been canceled without prejudice, and claim 13 has been amended. Support for the amendment is found in the specification, claims, and drawings as originally filed. No new matter has been added. Reconsideration and reexamination are respectfully requested.

Rejection under 35 U.S.C. § 112

Claims 13 and 41 are rejected as being indefinite because the phrase “the schedule routine” in line 14 has insufficient antecedent basis. The phrase “a scheduling routine” is recited in claim 13, line 4, thus providing antecedent basis. In any event, claim 13 has been amended slightly, and claim 41 has been canceled without prejudice. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection under 35 U.S.C. § 102(e)

Claims 1-33, 38-40, 42, and 43 are rejected as being anticipated by Yoon et al. (US 2004/0107717). Applicants do not concede the correctness of the rejection, however in the interest of advancing prosecution, Applicants submit herewith a declaration under 37 CFR 1.131, stating the invention was completed prior to the October 3, 2003 filing date of Yoon et al. As such, Yoon et al. is not believed to qualify as prior art, thereby rendering the rejection moot. The present application was filed on December 2, 2003.

Rejection under 35 U.S.C. § 103

Claims 34-37 are rejected as being unpatentable over Yoon ‘642 et al. and further in view of Yoon et al. (US 6,192,282). It appears this rejection was copied from the previous rejection, but the Smith references were changed to “Yoon”. US Patent 6,192,282 is to Smith et al., and it appears the ‘642 patent is also to Smith. In view of the incorrect citing of “Yoon” references, and the Examiner’s statement in the Final Office Action that Applicant’s previous arguments

relative to Smith were persuasive and new grounds of rejection were being presented, it appears this rejection was made in error. If the rejection is maintained over actual "Yoon" references, Applicants respectfully request clarification of which references are being used and how they are being applied.

Claim 41 is rejected as being unpatentable over Yoon et al. (US 2004/0107717). On page 5 of the Final Office Action, and with respect to claim 41, the Examiner takes official notice that exiting the editing mode after modifying the schedule was well known at the time the invention was made in the analogous art of computer scheduling. Applicants respectfully traverse such taking of Official Notice. As noted in MPEP § 2144.03(A):

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

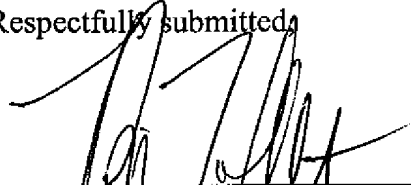
Applicants do not believe that the specific method steps, as used in the context of claim 41, of exiting an editing mode after modifying a schedule, is capable of instant and unquestionable demonstration as being well-known in the art of computer scheduling, as alleged by the Examiner. Applicants thus respectfully request that the Examiner produce supporting documentary evidence evidencing this alleged well-known knowledge in the art. In any event, claim 41 has been canceled without prejudice, rendering the rejection moot.

Conclusion

Reconsideration and reexamination are respectfully requested. It is submitted that, in light of the above remarks, all pending claims 1-40 and 42-43 are now in condition for allowance. If a telephone interview would be of assistance, please contact the undersigned attorney at 612-359-9348.

Appl. No. 10/725,826

Respectfully submitted,



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Brian M. Tufte, Reg. No. 38,638
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, MN 55403-2402
Telephone: (612) 359-9348
Facsimile: (612) 359-9349